

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

UNITED STATES OF AMERICA

v. **Case No. 4:14-cr-00080-05 KGB**

SCOTT LOWSON BESS

AMENDMENT TO CLARIFY JUDGMENT AND COMMITMENT

The Court, pursuant to Rule 35(a) of the Federal Rules of Criminal Procedure, hereby amends to clarify the Judgment and Commitment in this matter. At the sentencing hearing conducted in this matter on June 23, 2015, the Court imposed a sentence of imprisonment of 35 months.

The Court acknowledged on the record with counsel that, as reflected on page one of the Presentence Investigation Report, defendant Scott Lawson Bess was arrested by state authorities on related charges on January 13, 2014, and was detained. All counsel agreed that Mr. Bess was released on personal recognizance with pretrial supervision on January 29, 2015. Mr. Bess was detained following his change of plea in this matter on March 17, 2015. These facts are recited on page one of the Presentence Investigation Report, which the Court adopted as its findings of fact in this case. All counsel agreed that the state charges resulted from an offense involving Oxycodone pills and occurred during the federal drug conspiracy to which Mr. Bess plead guilty in this case.

It was, and is, the Court's intent that Mr. Bess receive credit toward his federal sentence for the time served in state custody on related charges, as reflected on page one of the Presentence Investigation Report. At the time of sentencing on June 23, 2015, the Court's understanding was that, by virtue of the way this information was recited on page one of the Presentence Investigation Report, the Federal Bureau of Prisons would give credit towards Mr.

Bess's federal sentence for the time served in state custody on related charges and that the Court's sentence did not need to specify this because the Federal Bureau of Prisons would credit that time.

If the Court's understanding of what the Federal Bureau of Prisons will do with Mr. Bess's time served in state custody on related charges is incorrect, the Court desires that its intent in regard to his sentence be effectuated. United States Sentencing Guideline § 5K2.23 titled Discharged Terms of Imprisonment states that a downward departure may be appropriate if the defendant has completed serving a term of imprisonment and subsection (b) of § 5G1.3 (Imposition of a Sentence on a Defendant Subject to Undischarged Term of Imprisonment or Anticipated State Term of Imprisonment) would have provided an adjustment had that completed term of imprisonment been undischarged at the time of sentencing for the instant offense.

Subsection (b)(1) of § 5G1.3 states that the Court shall adjust the sentence for any period of imprisonment already served on the undischarged term of imprisonment if the Court determines that such period of imprisonment will not be credited to the federal sentence by the Bureau of Prisons. Here, the Court's understanding is that the Federal Bureau of Prisons will credit that time. Otherwise, the Court would have concluded that subsection (b) of § 5G1.3 applies to the facts of Mr. Bess's case through application of § 5K2.23, and the Court would have adjusted Mr. Bess's sentence accordingly.

To ensure the sentence announced by the Court is imposed to comport with the Court's intent at sentencing, the Court amends to clarify the Judgment and Commitment and modifies Mr. Bess's sentence to a term of 35 months imprisonment in the Bureau of Prisons, with Mr. Bess receiving credit toward his federal sentence for the time served in state custody on related charges as reflected on page one of the Presentence Investigation Report. This modification is intended to ensure Mr. Bess receives the sentence the Court pronounced in open Court. All other

aspects of the sentence imposed by this Court remain in effect.

Should it be necessary, this Court determines that it would exercise its discretion to grant a variance under 18 U.S.C. § 3553(a) based on the facts and circumstances of this case to impose a sentence of 35 months imprisonment in the Bureau of Prisons, with Mr. Bess receiving credit toward his federal sentence for the time served in state custody on related charges as reflected on page one of the Presentence Investigation Report.

SO ORDERED this 26th day of June, 2015.



HONORABLE KRISTINE G. BAKER
UNITED STATES DISTRICT JUDGE